IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2749 OF 1985

1. Ashok Baburao Ingavale,
2. Muktabai Bapurao Ingavale,
3. Sulabai Jagannath Shedge,
4. Phulabai Vasant Jadhav ... Petitioners

versus

1. Pralhad Hari Bhate,
2. Shaikh Akbar Ibrahim,
3. Anandrao Pandurang Dhembare
   since deceased, per L.Rs.:
   a. Smt.Ashatai Anandrao
      Dhembre,
   b. Indrajit Anandrao Dhembre,
   c. Sandip Anandrao Dhembre,
   d. Milind Anandrao Dhembre,
   e. Sou.Jayashree Chandrakant
      Thorat,
   f. Sou.Rajashree Ramchandra
      Powar,
4. State of Maharashtra ... Respondents

...

Mr. P.L. Naik, for the Petitioners.

Mr. P.J. Shinde, for Respondent No.1.

Mr. A.H. Palekar, A.G.P., for Respondent No. 4.

Respondents Nos. 2 and 3a to 3f served.

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CORAM : A.M.KHANWILKAR,J.

8th July 2004

P.C.:

. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order dated April 16, 1981, passed by the Maharashtra Revenue Tribunal, Pune, in Revision No. MRT MS-XI@4/81(TNC.8.371/81) Pune. The land in question admeasures 7 acres 15 gunthas bearing Gut No. 606, situated at village Kidgaon, taluka and district Satara. The land was originally owned by father of Respondent No. 1. The Petitioners' predecessor was the tenant in the suit land prior to the tillers' day; On account of that, he became the deemed purchaser by operation of law. The tenant paid the

purchase price, consequent to which certificate under section 32M of the Bombay Tenancy and Agricultural Lands Act was issued in his favour on 28-11-1971. Thereafter, the tenant entered into sale deed in respect of 55 per cent. share in the suit land in favour of Shaikh Akbar Ibrahim on 3rd January 1972 for consideration. He also entered into a lease deed in respect of remaining 45 per cent. share in the suit land by lease deed dated 7th February 1976. It is not in dispute that the alleged transactions entered into by the tenant in respect of the suit land for transfer of the suit land were without obtaining prior permission of the Collector, as was required by section 43 of the Act. This complaint was received in the office of the Tahsildar, who initiated suo motu proceedings for resumption of the suit land. The Tahsildar, after giving opportunity to the concerned parties, by judgment and order dated November 30, 1979, declared that the sale deed entered into by the tenant to the extent of 55 per cent. share in the suit land as well as the lease created to the extent of 45 per cent. share in the suit land were invalid, because prior permission of

the Collector under section 43 was not obtained. The Tahsildar by the said order further declared that the suit land shall be deemed to vest in the State Government free from all encumbrances lawfully subsisting on the date of such vesting and shall be disposed of as per section 32P of the Act. Against this decision, the lessor Mr. Anandrao Pandurang Dhombre, the purchaser Mr. Shaikh Akbar Ibrahim, the tenant Mr. Ashok Baburao Ingavale and five others, Petitioners herein, preferred separate appeals before the Sub-Divisional Officer. The said appeals were allowed by the appellate authority on the reasoning that the evidence was not sufficient to establish the transaction between the parties. Against this decision, the original owner, Respondent No. 1 herein, preferred revision application before the Maharashtra Revenue Tribunal. The said revision application was resisted by the Respondents herein, inter alia, on the ground that the Respondent No. 1 had no locus standi to maintain the revision, as he was neither party to the original proceedings nor the proceedings before the appellate authority, and cannot be said to be interested person, so as to

maintain revision application. Even on merits, the Respondents supported the view taken by the appellate authority in allowing the appeals and remanding the case for further enquiry to the first authority. The Tribunal, however, by judgment and order confirmed the view taken by the first authority and opined that in view of the materials on record, there was no question of remanding the matter to the first authority for further enquiry. Insofar as the objection regarding locus of the Respondent No.1 to maintain the revision application is concerned, even that contention did not find favour with the Tribunal. Accordingly, the revision preferred by the Respondent No. 1 was allowed and the order passed by the first authority (Tahsildar) came to be restored. Against this decision, the present writ petition has been filed by the tenants. It is not in dispute that the subsequent purchaser Shaikh Akbar Ibrahim as well as the lessor Anandrao Pandurang Dhombre have not questioned the correctness of the decision of the Tribunal before this Court by independent writ petition.

2. The first argument canvassed on behalf of

the Petitioners herein is that the Respondent No. 1 had no locus standi to maintain the revision application before the Tribunal. It is next contended that the view taken by the appellate authority was correct, in that there was no legal evidence to establish the factum of transfer in favour of the lessor or the subsequent purchaser. It is, therefore, submitted that the Tribunal has completely exceeded its jurisdiction to record a finding of fact, which is contrary to the materials on record. It is lastly contended that the Petitioners' tenant was a disabled person and for which reason it was imperative for the tenant to give away a portion of the land on lease and portion by way of sale in favour of the respective parties; and in such a case, the rigours of section 43 will have no application. To buttress this submission, reliance was placed on the definition of expression "to cultivate personally" contained in section 2(6) of the Act.

3. On the other hand, Counsel for the Respondent No. 1 submits that there is no substance in the objection regarding the locus standi of the Respondent No. 1. He submits that

the assuming that the Petitioners may be right in contending that the Respondent No. 1 could not have maintained the revision application, the fact remains that the suo motu proceedings were initiated by the Tahsildar on receipt of complaint and if it is so, it was open to the Respondent No. 1 to maintain revision application, because the Respondent No. 1 was the erstwhile owner of the suit land and can be said to be interested person. It is next contended that no fault can be found with the finding recorded by the revisional authority, because that is founded on documents on record. It is submitted that the revisional authority has rightly observed that the appellate authority proceeded to reverse the finding reached by the first authority on specious reasoning by relying upon the statement of the party, who was interested to see that the land is not resumed to the State Government. Insofar as the last contention is concerned, the learned Counsel for Respondent No. 1 contends that even if the tenant purchaser was a disabled person and had good reason to part with the possession of the suit land or transfer the suit land to third

party, he was obliged to obtain prior permission of the Collector as was required under section 43 of the Act, in absence of which the transaction will have to be treated as invalid by virtue of sub-section (2) of section 43 of the Act.

4. After having considered the rival submissions, I shall first deal with the issue of locus standi of Respondent No. 1. The Tribunal has negatived that objection taken by the tenants in revision application. Indeed, Respondent No. 1 was neither party to the suo motu proceedings initiated by the Tahsildar or in the appeal proceedings before the appellate authority, but the fact remains that Respondent No.1 is the erstwhile owner of the suit land. No doubt, the Petitioners may be justified in contending that only persons, who are referred to in section 32P of the Act, can be said to be "interested persons". However, the fact remains that the suo motu proceedings have been initiated by the Tahsildar on receipt of complaint in respect of the alleged transactions. If it is so, even if the Respondent No. 1 had no locus standi to maintain the revision application, this Court in

exercise of writ jurisdiction will be justified in maintaining the order passed by the revisional authority, if it was more than convinced that the reasons recorded by the revisional authority are sound and tenable; Moreover, this Court will be loath to exercise writ jurisdiction if the erroneous order of the first Appellate Court was to be restored. Viewed in this perspective, I see no reason to reverse the order as passed by the revisional authority merely because the revision was filed by the Respondent No. 1.

5. That takes me to the next argument canvassed on behalf of the Petitioners. According to them, the conclusion reached by the appellate authority was appropriate and ought not to have been interfered with by the revisional authority. I find no substance in this argument. To my mind, the revisional authority has rightly interfered in exercise of revisional jurisdiction, having regard to the fact situation of the present case. The revisional authority has adverted to the documents on record, which clearly establish that the sale deed was executed in favour of Shaikh Akbar Ibrahim and no steps

have been taken by the Petitioners to seek declaration that the sale deed was sham and bogus. Mere denial of execution of sale deed cannot absolve the Petitioners, especially when the Index Register extract of the sale has been entered into for consideration of Rs. 8,000/-. Besides the sale deed, the revisional Court has also adverted to the Civil Suit filed by the subsequent purchaser Shaikh Akbar Ibrahim being Civil Suit No. 262 of 1981 asserting that portion of 55 per cent. share in the suit land has been purchased by him. Besides, even the Mutation Entry No. 426 effected on 6th August 1972 clearly states that 55 per cent. share in the suit land has been sold by the Petitioners to the said Shaikh Akbar Ibrahim for consideration and that Mutation Entry has been certified. It is well-settled that the Mutation Entry occurring in the village record will raise presumption, although the same is rebuttable. It is also noted by the revisional authority that the 7 x 12 extract indicates that the said Shaikh Akbar Ibrahim was in possession of the suit land to the extent of 55 per cent. share. All these factors were more than sufficient to hold that the

Petitioners have entered into sale deed with the said Shaikh Akbar Ibrahim for consideration in respect of the 55 per cent. share in the suit land. This by itself was sufficient for the authorities to initiate suo motu proceedings because the said transaction was effected without obtaining prior permission of the Collector, as was required by section 43 of the Act. The said transaction by operation of law will have to be held as invalid, having regard to section 43(2) of the Act. The first authority, in fact, proceeded to decide the matter on the basis of materials, which has also weighed with the Tribunal, as referred to above. If it is so, no fault can be found with the said decision of the Tribunal, which is founded on materials on record and which is a legal evidence pressed into service by the authority while deciding the case against the Petitioners. Besides the transaction of sale deed, the first authority has also found that the lease deed in favour of Anandrao Pandurang Dhombre is also established and the said lease has been entered into without obtaining prior permission of the Collector. However, according to the Petitioners, the factum

of execution of lease deed has not been established by legal evidence. Assuming that the Petitioners may be justified in contending that there is no legal evidence to establish the transaction of lease deed, however, the transaction of sale deed having been established beyond any reasonable doubt and the said transaction having been effected without obtaining prior permission of the Collector, the rigours of section 43 of the Act were clearly attracted. Even if portion of the land purchased by the tenant under the statutory provision was to be transferred without obtaining previous sanction of the Collector under section 43 of the Act, that would render such a transaction invalid and the entire land will have to be resumed by the State Government in terms of section 84-C(4) of the Act, because section 43 of the Act opens with the expression "no land", which would mean that even if portion of the land is transferred without previous sanction of the Collector, the entire land will have to be resumed and would vest in the State Government free from all encumbrances for disposal in terms of section 84-C of the Act. In any case, even with regard

to the lease transaction, the revisional authority has rightly reversed the conclusion reached by the appellate authority and, instead, affirmed the view taken by the first authority. The factum of entering into lease with Anandrao Pandurang Dhombre is also established by the revenue record, including the admissions of the concerned persons and the averments made in the Regular Civil Suit No. 265 of 1981. As mentioned earlier, the transaction of sale deed was good enough for the authority to invoke action under section 43 of the Act and to pass consequential order under section 84-C for resumption of the land and for its disposal.

6. To overcome the above position, the learned Counsel for the Petitioners had contended that the tenant was a disabled person and for which reason if the tenant was to make arrangement so as to get the land cultivated with the assistance of some other person, then in that case, it will have to be assumed that the tenant was cultivating the land personally and the rigours of section 43 of the Act will not be attracted. This argument clearly overlooks that

even if section 2(6) of the Act which defines the expression "to cultivate personally" would permit a widow or a minor or a disabled person to get the land cultivated by servants or by hired labour of the third person, in case of transfer of land by such person, the rigours of section 43 of the Act will nevertheless be attracted. In the present case, the tenant has entered into sale deed in respect of 55 per cent. share of the suit land and has thereby lost the title in respect of that portion by creating right title and interest in favour of third person. In such a case, it will not be a case of "to cultivate the land personally", because the tenant has not cultivated the land with the assistance of servants or by hired labour or through tenant as such. In this view of the matter, there is no substance in this writ petition. Whereas I am disposed to uphold the view taken by the revisional authority, which, in turn, has affirmed the view taken by the first authority.

7. In the circumstances, this petition fails and the same is dismissed. Rule discharged with costs.

8. Parties to act on the authenticated copy of this Judgment.

(A.M.KHANWILKAR,J.)